

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

SALVADOR MICHAEL HERRERA,

Petitioner,

Case No. 6:22-cv-01027-CL

v.

ORDER

COREY FUERE

Respondent.

AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation (“F&R”) filed by Magistrate Judge Mark Clarke. F&R, ECF No. 45. Judge Clarke recommends that Petitioner’s Amended Petition for Writ of Habeas Corpus (ECF No. 31) be DENIED as untimely, and that the case should be DISMISSED with prejudice. *Id.*

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of

the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Although no review is required in the absence of objections, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

In this case, Petitioner brings this habeas corpus proceeding pursuant to 28 U.S.C. § 2254. ECF No. 31. Judge Clarke found that Petitioner waited 826 days to file his petition, which exceeds the one year statute of limitations under ” 28 U.S.C. § 2244(d)(1). F&R at 6. Judge Clarke further found that equitable tolling did not apply, because Petitioner had not shown extraordinary circumstances so warranting. *Id.* at 7. Judge Clarke recommended that the district judge also deny a Certificate of Appealability under 28 U.S.C. § 2253(c)(2), because Petitioner had not made a substantial showing of denial of a constitutional right. F&R at 12. Petitioner filed objections and the government responded. ECF Nos. 47, 48.

CONCLUSION

The Court has reviewed the F&R, the filings, and the record and finds no error. The F&R, ECF No. 45, is ADOPTED. The Amended Petition for Writ of Habeas Corpus (ECF No. 31) is DENIED as untimely. This proceeding is DISMISSED with prejudice. Certificate of appealability is DENIED. Final judgment shall be entered accordingly.

It is so ORDERED and DATED this 15th day of October 2024.

/s/Ann Aiken
ANN AIKEN
United States District Judge